

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LEAH S.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2011050880

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 6, 2011, in San Leandro, California.

Claimant Leah S. was not present. She was represented by her father, Richard A.

Pamela Thomas, Director of Consumer Services, represented Regional Center of the East Bay (RCEB).

The record closed on July 6, 2011.

ISSUE

Whether RCEB is required to pay for four months of an independent living skills program at Taft College for Claimant.

FACTUAL FINDINGS

1. Claimant, born December 1, 1989, is currently 21 years of age. She lives in Oakland with her adoptive parents and sister. Claimant receives services from RCEB pursuant to a diagnosis of mild mental retardation in accordance with her Individualized Program Plan (IPP).

2. Richard A., Claimant's father, reports that Claimant has received special education services since the second grade. She attended Oakland High School where she did well, but transferred to Oakland Technical High School because her parents hoped it would provide a better social environment. Claimant participated in the workability program at Oakland Tech, including assisting in an elementary school class for autistic children. Claimant has been attending the College of Alameda's Community Immersion Program since 2009. She has continued to work at the elementary school, and receives minimum wage for her efforts in that position.

3. Taft College in Kern County has a very well regarded Transition to Independent Living Program for the developmentally disabled. Claimant first applied for admission to the Taft program in 2005. The admission process is lengthy and thorough, and Claimant was accepted in 2006. Claimant's parents, however, wanted to be confident that Claimant was ready to take advantage of the program, and did not enroll her at that time. In 2010, they were notified that Claimant was accepted for the program beginning in August 2011. Her parents feel that Claimant is now more than ready to leave home and enter the Taft program.

4. The most recent IPP meeting was held on January 14, 2010. At the meeting, Claimant's parents asked case manager Winnie Ho if RCEB would fund the Taft program. Ho told them she would check and get back to them. The IPP, which is signed by all parties, also states that "Oakland Unified School District will fund [Claimant's] educational program through 12/2011."

5. On May 12, 2011, RCEB issued a Notice of Proposed Action stating that it "will not fund for [Claimant] to attend Taft College in 08/2011." The reason given is that her "birthday is on 12/01/1989. Oakland Unified School District is still financially responsible for her educational program until 12/2011 when she reaches 22 years of age."

6. Richard A. filed a fair hearing request on Claimant's behalf. He requested that RCEB "fund the four months prior to [Claimant's] 22nd birthday. RCEB needs only to fund [Claimant's] first semester. Then her case is transferred to the local regional center (Kern Co.)." This hearing followed.

7. Claimant receives educational services through the Oakland Unified School District (OUSD) pursuant to her Individualized Education Program (IEP). The most recent IEP is dated April 28, 2011, and is signed by the parties. It confirms her projected graduation date as in December 2011 (when she will age out of public school provided educational programs). But it also states that Claimant “and her parents decided to voluntarily exit [Claimant] from the OUSD Community Immersion Program to go to a preferred placement.”

8. Richard A. described the Taft College program and the basis for the family’s conclusion that it would best serve Claimant’s goals and needs. It indeed appears to be a wonderful program, well suited to Claimant and her needs and goals. These facts were not disputed by RCEB.

9. RCEB funds day programs for adults over 22 years of age. Prior to age 22, the educational needs of RCEB consumers are required to be met by the public school system. As Claimant will not reach that age until December 2011, RCEB asserts that it cannot fund the Taft College program until that date, no matter the desirability of the program or Claimant’s choice to attend it.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act:

[I]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

(*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

(Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place:

A regional center may. . . purchase service. . . from an individual or agency which the regional center and consumer. . . or parents. . . determines will best accomplish all or any part of that [IPP] (Welf. & Inst. Code § 4648, subd. (a)(3)).

4. A particular IPP notwithstanding, the direct purchase of services by regional centers is restricted in many respects. Regional centers are specifically charged to provide services in the “most cost-effective and beneficial manner” (Welf. & Inst. Code § 4685, subd. (c)(3)) and with “the maximum cost-effectiveness possible” (Welf. & Inst. Code § 4640.7, subd. (b)). To duplicate a service available elsewhere to a consumer is obviously not a cost-effective use of public funds. Accordingly, regional centers are required to “first consider services and supports in the natural community. . . .” (Welf. & Inst. Code § 4648, subd. (a)(2).) In addition, regional centers are enjoined not to supplant the budget of any agency that has a legal responsibility to serve the general public and that receives public funds for providing those services. (Welf. & Inst. Code § 4648, subd. (a)(8).) In other words, regional centers may not purchase services and supports to implement an IPP if they are available elsewhere.

5. Services available through other agencies are commonly referred to as “generic resources.” In Claimant’s case, OUSD is a generic resource responsible for providing for her educational needs until she is 22 years old. The fact that the Taft College program would be the best program for Claimant or even merely beneficial for her is irrelevant to the issue of funding. RCEB cannot legally fund an educational program of any kind for Claimant until she attains the age of 22. To do so would be to supplant a generic resource in violation of the Lanterman Act’s provisions. Accordingly, her appeal must be denied.

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ORDER

Claimant Leah S.'s appeal is denied.

DATED: July 20, 2011

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.